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RE: CNA’s Racial Bias Assessment of NCPD Must Properly Assess, and Make Recommendations that Would Effectively End NCPD’s Racially Disparate Policing Practices

Dear Mayor Summey, City Councilors, and Zoë Thorkildsen:

On behalf of Anthony and Denise Scott, the Charleston Area Justice Ministry (CAJM), the ACLU of South Carolina, Charleston Black Lives Matter, and the NAACP Legal Defense and Educational Fund, Inc. (LDF),¹ we submit comments on CNA’s Preliminary Report (Report) on the Racial Bias Assessment of the North Charleston, South Carolina Police Department (NCPD).

I. Background

On April 4, 2015, then NCPD officer Michael Slager shot in the back and killed Walter Scott, a Black, unarmed resident of North Charleston (City) after a traffic stop for a broken taillight.² For over six years, local and national advocates, CAJM, the ACLU of South Carolina, the North Charleston Branch of the NAACP, Charleston Black Lives Matter, and LDF have worked with North Charleston residents, city officials, and NCPD personnel to address racial disparities in NCPD’s policing practices. In 2016, we supported city officials’ request to the Community Oriented Policing Services Office of the U.S. Department of Justice (COPS Office) to conduct a collaborative review of NCPD’s policies and practices.³ And, in 2017, LDF provided the COPS Office and NCPD officials a report, *It Matters If You’re Black or White*,⁴ which found racial disparities in the filing and resolution of complaints against North Charleston police officers.

Unfortunately, in 2017, the COPS Office ended its collaborative reform assessments without releasing its analysis of the NCPD to the public.⁵ Subsequently, in May 2019, the City’s Citizen’s Advisory Commission on Police-Community Relations recommended an audit of NCPD

¹ Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. It has been a separate organization from the NAACP since 1957. LDF’s work to address police violence and misconduct dates back to its inception. *See, e.g., Shepherd v. Florida*, 341 U.S. 50 (1951) (reversing the convictions of Black men falsely accused of raping a white woman in 1949; the men were brutally beaten by sheriff’s deputies to force confessions). Today, LDF’s Justice in Public Safety Project uses litigation, policy advocacy, research, community organizing, and strategic communications to: (1) ensure accountability for police brutality and misconduct through community oversight and changes to laws and policies; (2) promote policing and public safety practices that eliminate the pernicious influence of racial and other biases; and (3) support a new paradigm of public safety that drastically reduces the presence of armed law enforcement in communities of color.

² Michael S. Schmidt & Matt Apuzzo, *South Carolina Officer is Charged With Murder of Walter Scott*, N.Y. TIMES (Apr. 7, 2015), <https://www.nytimes.com/2015/04/08/us/south-carolina-officer-is-charged-with-murder-in-black-mans-death.html>.

³ Pete Williams, *Feds to Review North Charleston Cops After Walter Scott Shooting*, NBC NEWS (May 17, 2016), <https://www.nbcnews.com/news/us-news/feds-review-north-charleston-cops-after-walter-scott-shooting-n575446>.

⁴ NAACP Legal Defense and Educational Fund, Inc., *It Matters if You’re Black or White: Racial Disparities in the Handling of Complaints Against North Charleston Police Officers* (July 2017), https://tminstituteldf.org/wp-content/uploads/2017/08/NAACP-LDF-report-on-North-Charleston-Police-Dept-FINAL-July-2017_0.pdf.

⁵ Megan Rivers & Drew Tripp, *DOJ Abandons Review of North Charleston PD, Local Committee to Go Forward in its Place*, ABC 4 NEWS (Sept. 20, 2017), <https://abcnews4.com/news/local/doj-abandons-review-of-north-charleston-pd-local-committee-to-go-forward-in-its-place>.

to assess it for racial disparities.⁶ And, in 2020, advocates and community members strongly urged North Charleston elected officials to conduct a racial bias audit of the police department.⁷

In 2020, the City contracted with CNA to conduct the racial bias audit and promised to “examine systemic and individual racial bias” and “work closely with all segments of the community”⁸ CNA’s scope of work provides that it will “help strengthen and rebuild trust with the community.”⁹

Key goals of the audit include:

- “assess and assist the efforts of [NCPD], in concert with the community, to uncover any aspects of implicit bias, including systemic and individual racial bias,”
- “assess the impact of enforcement operations on historically marginalized and discriminated against populations, particularly the African American and Hispanic communities,”
- “engage the community to understand the experiences and expectations of interactions with NCPD”, and
- “provide recommendations to improve community-oriented policing practices, transparency, professionalism, accountability, community inclusion, fairness, effectiveness, training [] and public trust.”¹⁰

On July 19, 2021, CNA published its Report outlining its conclusions and recommendations based on data and information that it reviewed. In its report, CNA recognized, at a high level, that NCPD officers disproportionately stop, cite, arrest, and use force against Black residents.¹¹ But, as explained below, CNA and the City did not sufficiently engage with the public during the audit process and must improve their outreach during the remainder of the audit process. Additionally, CNA did not conduct potentially critical analyses that may demonstrate additional sources of bias which should be remedied, and analyses which *were* done likely underestimated bias. CNA should conduct these additional analyses and implement effective, community-driven remedies that will dramatically reduce disparities in NCPD’s practices.

The City has demonstrated a commitment to improving its public safety services to all North Charleston residents by undertaking a racial bias audit. However, more must be done to

⁶ Gregory Yee, *North Charleston Officials Brush Aside Racial Bias Audit for 4 Years*, POST AND COURIER (Apr. 2, 2021), https://www.postandcourier.com/news/north-charleston-officials-brush-a-side-racial-bias-audit-for-4-years/article_6e428a42-4105-11ea-a849-eb8e94f2c703.html.

⁷ Press Release, NAACP Legal Defense and Educational Fund, Inc., Religious, Civil Rights and Civil Liberties Organizations Call On North Charleston Mayor and Councilmembers to Commission Independent, Comprehensive Racial Bias Audit of Police Department (Apr. 13, 2020), <https://www.naacpldf.org/press-release/religious-civil-rights-and-civil-liberties-organizations-call-on-north-charleston-mayor-and-councilmembers-to-commission-independent-comprehensive-racial-bias-audit-of-police-department/>.

⁸ CNA, *North Charleston Police Department Racial Bias Audit: Summary of CNA’s Approach, Positioning, and Team 1* (Sept. 4, 2020) <https://www.northcharleston.org/wp-content/uploads/NCPD-Racial-Bias-Audit-CNA-Approach-and-Team-FINAL.pdf> [hereinafter Scope of Work].

⁹ Scope of Work, *supra* note 8, at 2.

¹⁰ *Id.*

¹¹ See generally Zoë Thorkildsen, et al., Preliminary Draft for Public Comment; Racial Bias Assessment of the North Charleston, South Carolina, Police Department (July 2021), <https://www.northcharleston.org/wp-content/uploads/NCPD-Assessment-Report-PRELIMINARY-REPORT-Public-Comment.pdf> [hereinafter Report].

ensure that the processes employed during the audit and in implementing recommendations are sufficient to achieve the aims of the audit and equitable public safety practices in North Charleston. To that end, the City and CNA should implement the recommendations below.

II. Community Input is Critical to the Success of the Audit; CNA and the City Must Engage More of the North Charleston Community To Guide the Audit and Measure its Success

CNA's scope of work provides that it will engage the community to "examin[e] systematic and individual racial bias,"¹² "provide a source of qualitative data in our assessment of policing practices, culture, leadership, and community policing approaches,"¹³ and "understand policies that contribute to an increase in the likelihood of racial profiling, racial bias, and implicit bias."¹⁴ A goal of the audit is to assess and address bias "in concert with the community."¹⁵

In the Report, CNA writes that it used "a modified version of the snowball method" to reach people for individual interviews and hear their experiences with NCPD.¹⁶ Yet, CNA has only reached approximately 200 North Charleston community members, 25 of whom are NCPD personnel and 173 of whom are residents.¹⁷ Additionally, there do not seem to have been efforts to speak with people impacted by policing or NCPD's racial bias. CNA must do more to work "in concert with the community" to "understand policies that contribute to an increase in [] racial profiling."¹⁸

The audit cannot be successful unless it incorporates input from the community during all stages – to identify issues that need to be audited; in identifying solutions to be implemented; and in ensuring that solutions are being implemented effectively. While it is too late to remedy some shortcomings that occurred because the City excluded community input during the scope of work phase, the final report must incorporate substantially more community feedback, especially from communities and community members who have been historically over-policed. We urge CNA to reach a broader segment of the North Charleston community and especially those who are impacted by policing to inform practices that should be audited. Likewise, CNA must speak with marginalized or difficult to reach groups and groups impacted by policing, like those who have been arrested, or victims of force, the Black and Latinx communities, student and youth groups, people living with disabilities or groups representing them, and people experiencing homelessness or groups providing direct support to them. CNA should also perform specific outreach to neighborhoods that consistently have a heavy police presence, like Chicora Cherokee, Charleston Farms, Dorchester Terrace, and Liberty Hill. This outreach is critical to understanding how potential bias from officers or agency decision-making manifests.

Moreover, CNA must ensure that residents are heard, and their views credited. The Report did not fully credit the experiences of North Charleston residents despite finding that "racial

¹² Scope of Work, *supra* note 8, at 2.

¹³ Scope of Work, *supra* note 8, at 9.

¹⁴ Scope of Work, *supra* note 8, at 10.

¹⁵ Report, *supra* note 11, at 2.

¹⁶ Report, *supra* note 11, at 15.

¹⁷ See Report, *supra* note 11, at 5, 9.

¹⁸ Scope of Work, *supra* note 8, at 2, 10.

disparities are present in many NCPD's interactions with the community"¹⁹ For example, CNA opines that "North Charleston's *perceived* history of systemic racism continues to result in racial tension"²⁰ CNA goes on to say that its audit process would help "identify policies and practices that may *unintentionally* negatively affect the community, especially those who *feel* they have been marginalized."²¹ It is important for CNA, the City of North Charleston, and NCPD to recognize that the history of systemic racism is not perceived - it is real; that those impacted by racially biased policing do not simply feel marginalized – they have been marginalized; and where policies and practices cause harm, intent is not relevant, and the focus should be on the harm caused.²²

CNA should also gather the demographic information of all residents with whom they speak, including Spanish speaking residents. CNA hosted a listening session dedicated to Spanish-speaking residents but did not collect demographic information from attendees at this meeting. Spanish speakers are diverse, and their demographic information is also important and should be collected.

Overall, the City and CNA should continue to solicit information from residents most impacted by policing in North Charleston, particularly from groups they have not sufficiently engaged, and improve their outreach during remaining stages of the audit.

III. The City, CNA, and NCPD Must Be More Transparent about the Technology used by NCPD and Make NCPD's Data Available to the Public

CNA's goal to "[p]rovide recommendations to improve. . . transparency. . .,"²³ is consistent with residents' goal of increasing transparency of NCPD's practices.²⁴ One major frequent source of racial bias in law enforcement activity about which residents have insufficient information is NCPD's use of technology to disproportionately surveil and criminalize Black residents. Law enforcement agencies frequently use technology such as predictive policing tools,²⁵ drones,²⁶

¹⁹ Report, *supra* note 11, at 41.

²⁰ Report, *supra* note 11, at 1 (emphasis added).

²¹ Report, *supra* note 11, at 2 (emphasis added).

²² CNA likewise does not record other important details. For example, CNA does not mention that a white NCPD officer shot and killed an unarmed Black man in its account of the killing of Walter Scott. Although CNA provides that the killing ignited concerns over racial tensions and disparities, these details must not be overlooked, especially because CNA has been tasked with conducting a racial bias audit. Moreover, CNA's description of Walter Scott's killing as a "officer-involved shooting" belies and obfuscates the truth. NCPD officer Michael Slager murdered Walter Scott. CNA should say that.

²³ Report, *supra* note 11, at 2.

²⁴ Report, *supra* note 11, at 15.

²⁵ See Will Douglas Heaven, *Predictive Policing Algorithms are Racist. They Need to be Dismantled*, MIT TECHNOLOGY REVIEW (July 17, 2020), <https://www.technologyreview.com/2020/07/17/1005396/predictive-policing-algorithms-racist-dismantled-machine-learning-bias-criminal-justice/>.

²⁶ Faine Greenwood, *How to Regulate Police Use of Drones*, BROOKINGS (Sept. 24, 2020), <https://www.brookings.edu/techstream/how-to-regulate-police-use-of-drones/> (describing law enforcement's use of drones to spy on alleged drug deals and homeless encampments, and to arrest Black Lives Matter protestors).

license plate readers,²⁷ aerial surveillance,²⁸ surveillance cameras,²⁹ shot spotters,³⁰ stingrays,³¹ and monitor social media accounts³² disproportionately in Black communities, which leads to their disparate criminalization.³³ To “improve . . . transparency . . . ,”³⁴ CNA and NCPD should disclose all technology and data-driven strategies that NCPD uses and the City should require that NCPD disclose and give members of the public an opportunity to comment before it or NCPD attempts to purchase or deploy new technology on North Charleston residents.

Additionally, transparency regarding officers’ activities is critical to determine whether their activities have a disparate impact on North Charleston’s residents of color. CNA should recommend that the City and NCPD regularly publish data regarding officers’ contacts with residents, including demographic information of the officer(s) and people with whom they interact, and all resulting enforcement activity, including field interviews, pedestrian stops, traffic stops, searches, and all resulting consequences including warnings, citations, diversion, uses of force, and arrests. More information about the data that should be published is included in Section V(D). This data should be published on a monthly basis, and accessible on a public website.

²⁷ George Joseph, *What Are License-Plate Readers Good For? Automatic Plate-Readers Catch Few Terrorists or Violent Criminals, But Do Plenty of Harm to Low-Income Communities of Color*, BLOOMBERG (Aug. 5, 2016), <https://www.bloomberg.com/news/articles/2016-08-05/license-plate-readers-catch-few-terrorists-but-lots-of-poor-people-of-color>.

²⁸ Nathan Sheard, *Officials in Baltimore and St. Louis Put the Brakes on Persistent Surveillance Systems Spy Planes*, ELECTRONIC FRONTIER FOUNDATION (Mar. 2, 2021), <https://www.eff.org/deeplinks/2021/03/officials-baltimore-and-st-louis-put-brakes-persistent-surveillance-systems-spy>.

²⁹ Surveillance City: NYPD Can Use More Than 15,000 Cameras To Track People Using Facial Recognition In Manhattan, Bronx, And Brooklyn, Amnesty International, AMNESTY INTERNATIONAL (June 3, 2021), <https://www.amnesty.org/en/latest/news/2021/06/scale-new-york-police-facial-recognition-revealed/> (finding that New York City cameras are concentrated in neighborhoods with 54% Black and 30% Hispanic populations).

³⁰ Todd Feathers, *Gunshot-Detecting Tech is Summoning Armed Police to Black Neighborhoods*, VICE (July 19, 2021), <https://www.vice.com/en/article/88nd3z/gunshot-detecting-tech-is-summoning-armed-police-to-black-neighborhoods> (finding that ShotSpotter frequently generates false alerts and is deployed almost exclusively in non-white neighborhoods).

³¹ George Joseph, *Racial Disparities in Police ‘Stingray’ Surveillance, Mapped*, CITYLAB (Oct. 18, 2016), <https://www.bloomberg.com/news/articles/2016-10-18/u-s-police-cellphone-surveillance-by-stingray-mapped>.

³² KiDeuk Kim, et al., *2016 Law Enforcement Use of Social Media Survey*, URBAN INSTITUTE (Feb. 2017), https://www.urban.org/sites/default/files/publication/88661/2016-law-enforcement-use-of-social-media-survey_5.pdf (finding that in a survey of 539 law enforcement agencies, 70% reported that they used social media to gather intelligence for investigations); Sam Levin, *Revealed: LAPD Officers Told To Collect Social Media Data On Every Civilian They Stop*, GUARDIAN (Sept. 8, 2021), <https://www.theguardian.com/us-news/2021/sep/08/revealed-los-angeles-police-officers-gathering-social-media>; *Map: Social Media Monitoring by Police Departments, Cities, and Counties*, BRENNAN CENTER (July 10, 2019), <https://www.brennancenter.org/our-work/research-reports/map-social-media-monitoring-police-departments-cities-and-counties>; Rachel Levinson-Waldman, *How To Reform Police Monitoring of Social Media*, BROOKINGS (July 9, 2020), <https://www.brookings.edu/techstream/how-to-reform-police-monitoring-of-social-media/>; *Police Monitoring of Social Media Sparks Concerns in Black and Brown Communities*, NPR (Aug. 21, 2020), <https://www.npr.org/2020/08/21/904646038/police-monitoring-of-social-media-sparks-concerns-in-black-and-brown-communities>.

³³ Rashida Richardson, et al., *Dirty Data, Bad Predictions: How Civil Rights Violations Impact Police Data, Predictive Policing Systems and Justice*, 94 NYU L. REV. 192 (2019), <https://www.nyulawreview.org/wp-content/uploads/2019/04/NYULawReview-94-Richardson-Schultz-Crawford.pdf>.

³⁴ Scope of Work, *supra* note 8, at 2.

IV. CNA Ignored Potential Major Sources for Racial Bias in NCPD’s Practices, and Other Important Issues, and Should Supplement its Report with this Information

Racial bias may be present at each stage of agency and officer activity; it can stem from the number of officers deployed to particular neighborhoods, to the officers’ decisions of whether to stop a person, and whether to issue a citation, make an arrest, or use force. To evaluate and remedy all the sources of racial disparities, each stage of decision-making which may contribute to biased policing must be assessed. While CNA conducted some analysis on disparities in citations, arrests, and force, it should also conduct the critical evaluations outlined below so that its assessment does not substantially underestimate the bias present in NCPD’s practices. We urge CNA to: 1) complete its analysis in a number of areas; 2) use benchmarks that would better capture racial bias; and 3) to assess NCPD’s management and supervision of officers.

A. CNA should fully identify all sources of racial bias in NCPD practices to remedy them

1. CNA should assess racial bias in deployment decisions and propose remedies to decrease over-policing of communities of color.

CNA noted that “[c]ommunity members expressed that NCPD officers seem to overly police certain areas, particularly neighborhoods with many residents living under the poverty level or residents of color” but inexplicably did not analyze data on the number of NCPD officers assigned and deployed to Black neighborhoods and communities compared to white neighborhoods after accounting for calls for service.³⁵ While individual officer discretion can be the source of racially disparate policing, leadership and supervisor decision-making can likewise contribute to disparate enforcement and must be evaluated as part of the racial bias audit. Therefore, CNA should review NCPD’s deployment decisions, as well as the procedures and priorities for deploying officers and evaluate whether officers are more frequently deployed to Black and Brown communities in a manner that contributes to over-policing and the disparate criminalization of people of color in North Charleston. Likewise, NCPD should make publicly available aggregate information on deployment decisions, and the procedures and priorities should be subject to public comment.

2. CNA should use population data for a benchmark in assessing racial disparities in uses of force, as it does for other analyses.

CNA states that analysis of arrest and force data is difficult because NCPD does not keep record on civilian contact, assuming that is the appropriate benchmark.³⁶ However, using only civilian contact data as a benchmark would mask biases in the initial contacts made by officers. CNA uses both population data and law enforcement interaction as benchmarks elsewhere and emphasizes the importance of using “multiple baseline measures whenever possible.”³⁷ Therefore, CNA should also use population data as a benchmark to prevent underestimating bias in its

³⁵ Report, *supra* note 11, at 8.

³⁶ Report, *supra* note 11, at 20-21.

³⁷ Report, *supra* note 11, at 20.

evaluation of arrests and uses of force.³⁸

3.CNA should evaluate racial disparities in specific types of arrests and propose alternative responders for calls involving people in crisis, experiencing homelessness, and other areas.

CNA should conduct an amended benchmark analysis, using population as the benchmark, and analyze disparities separately by arrest category for discretionary, misdemeanor, or non-violent offenses such as quality of life offenses, which often disproportionately impact people of color.³⁹ “At the individual level, a criminal conviction has a negative impact on employability, access to housing, and access to public services. At the community level, disproportionately incarcerating people from poor communities removes economic resources and drives cycles of poverty and justice system involvement, making criminal justice contact the norm in the lives of a growing number of [B]lack Americans.”⁴⁰

Additionally, CNA should analyze NCPD’s arrest data to determine the most common types of arrests made by officers and disaggregate by civilian race. Likewise, individuals or organizations with relevant experience and expertise, such as mental health practitioners, should respond to incidents involving their area of expertise, such as mental health crises, to address the actual or underlying issue(s) presented. Where possible, alternative responders rather than law enforcement should be deployed to better address the needs of community members and to potentially reduce arrests.

4.CNA should thoroughly evaluate NCPD’s administrative investigation system and disciplinary process.

CNA’s analysis of NCPD’s investigation of complaints and disciplinary system is also incomplete. CNA’s scope of work provides that it “will analyze five years of citizen and officer allegation/complaint data [], including case processing and outcomes . . . and help agencies understand the patterns and trends in citizen and officer complaints over time and by geography, as well as other variables of interest, such as racial bias.”⁴¹ It also states that CNA “couples quantitative analysis with qualitative inquiry”⁴² CNA successfully captured some of the concerns expressed by community members regarding NCPD’s complaint and administrative investigation process, noting that residents were “confused about the complaint filing process . . . uncomfortable sharing [] personal information during the complaint process, fear[ed] intimidation

³⁸ If CNA used population as a baseline for force incidents, it would find that NCPD officers used force against Black people 3.05 times more than against white people.

³⁹ A study conducted in Dallas found disparities in arrests for low level offenses. Eline de Bruijn, *3-Year Study Reveals Racial Disparities in Low-Level Arrests in Dallas*, ABC 8 WFAA (Mar. 19, 2021), <https://www.wfaa.com/article/news/local/3-year-study-arrested-low-level-offenses-disproportionate-population-dallas-black-hispanic-latino-white/287-9bccbe66-3174-4ed4-9392-adaf08ee188d>; *Selective Policing: Racially Disparate Enforcement of Low-Level Offenses in New Jersey*, ACLU OF NEW JERSEY (December 2015), https://www.aclu-nj.org/files/7214/5070/6701/2015_12_21_aclunj_select_enf.pdf.

⁴⁰ Elizabeth Hinton, et al., *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System* 1, VERA INSTITUTE OF JUSTICE (May 2018), <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf>.

⁴¹ Scope of Work, *supra* note 8, at 14.

⁴² Scope of Work, *supra* note 8, at 15.

and retribution by NCPD personnel,” and were “concerned that the complaint may not actually be recorded or resolved.”⁴³

However, CNA did not do a qualitative review of NCPD’s administrative investigations. We urge CNA to conduct a qualitative analysis of complaint investigations, evaluating whether complaints were appropriately received by NCPD personnel and correctly classified when they raised allegations of bias or discrimination, whether the allegations were fully investigated, whether interviews of complainants, witnesses and officers were conducted in an unbiased manner, and whether all evidence was pursued thoroughly and independently.

Furthermore, CNA stated that it would “analyze disciplinary outcomes”⁴⁴ An analysis of the discipline imposed on officers by NCPD is critical to understanding accountability within NCPD. CNA did not evaluate the discipline imposed for complaints relating to bias and discrimination, a critical gap in its analysis, which must be addressed. For example, complaint documents we received from a Freedom of Information Act request show that an officer was alleged to have “engaged in the use of racial and ethnic slurs while referring to the public and towards individual officers in the presence of several officers” and was permitted to resign; however, it is unclear whether NCPD completed the investigation.⁴⁵ When officers resign as a result of investigations into alleged misconduct, the investigations must be completed, and the results documented and shared with any future law enforcement agency where the officer may seek employment. In another incident, an officer was sent to mere sensitivity training, and not disciplined, after a complaint was sustained, affirming that the officer said “he better have locked the fucking doors so the porch monkeys don’t steal anything” when referring to a community member.⁴⁶ The clear use of such racist language merits discipline, and an evaluation of whether the officer’s enforcement actions demonstrated racial bias or animus, not sensitivity training.

5. CNA should evaluate data regarding the actions of School Resource Officers to assess racial bias towards North Charleston youth

CNA did not analyze the actions of School Resource Officers (SRO) or law enforcement officers in schools, a serious concern of many community members. While CNA interviewed SROs and concluded that SROs should act “in a mentorship role to provide youth with a clear perspective on policing, expectations about interacting with police, and opportunities to ask questions and inquire about policing practices,”⁴⁷ CNA did not speak with students, parents, administrators, counselors, and other school staff regarding the role or impact of SROs in schools. We strongly urge CNA to conduct targeted outreach to students, parents, teachers, administrators, and counselors who interact with SROs.

CNA should also analyze the NCPD school enforcement data to determine whether there are any patterns suggesting bias. We shared with CNA youth arrest data from 2015-2016 and 2019 which was obtained by CAJM from NCPD. This data contains information including the date of

⁴³ Report, *supra* note 11, at 7.

⁴⁴ Scope of Work, *supra* note 8, at 15-16.

⁴⁵ Case 17-IN111 (Sept. 19, 2017) (on file with LDF).

⁴⁶ Case 18-IN44 (Mar. 20, 2018) (on file with LDF).

⁴⁷ Report, *supra* note 11, at 47.

the incident, the age, race, and sex of the student involved, the alleged offense, and outcome of the incident. CNA should request and analyze all school enforcement data from NCPD to evaluate the racial disparities that exist in the enforcement of criminal laws in schools. CNA must also analyze school enforcement disparities using both the student population and student misconduct as benchmarks. No recommendations related to SROs should be made without a complete analysis of this data and input from people impacted by SROs.

B. CNA reached conclusions that may not follow from the data they reviewed

CNA concluded from its quantitative analysis of traffic stop data that NCPD’s citation “rate [wa]s relatively low”⁴⁸ Specifically, CNA found that 55% of all traffic stops result in a citation being issued.⁴⁹ In discussing the harmful impact of high citation rates on the community, CNA reflects that “NCPD’s relatively lower citation rate is a positive sign.”⁵⁰ This is not necessarily so. While low citation rates may be a result of officers using their discretion to allow drivers to leave with a warning, they may also be a result of officers making baseless traffic stops. Indeed, if low citation rates alone were a positive sign of policing, officers could be incentivized to inflate the percentage of traffic stops ending in warnings by making more traffic stops. If the data exists, CNA should analyze traffic stop data for bias in the initiation of stops. Regardless, without more data and analysis, concluding that a low citation rate is a positive sign is premature.

C. CNA should assess NCPD’s supervisors and leadership in their oversight of officers

Front-line supervisors have substantial influence over officer behavior.⁵¹ CNA should assess the impact of supervisors, management, and leadership – from front-line supervisors to the Chief – on officers’ and supervisors’ actions contributing to racial disparities, and in holding officers and supervisors’ accountable. Supervisors themselves must be held accountable for any failures in oversight or leadership to ensure that they will, in turn, hold officers accountable for their encounters with residents.

Additionally, the Report repeatedly praises the personal relationship that residents have with Chief Burgess and their reliance on him to resolve issues with NCPD. However, many residents will not have access to the Chief to resolve their concerns. NCPD must have an effective, accessible, and sustainable complaint and disciplinary system that holds all officers and supervisors accountable regardless of who is in the position of the chief. CNA should evaluate NCPD’s overall accountability system – the supervision of officers; whether investigations are fair, thorough, and independent; and whether discipline is appropriate. Where there are failures, CNA should recommend appropriate remedies to ensure that officers who act on racial bias are held accountable.

⁴⁸ Report, *supra* note 11, at 25.

⁴⁹ Report, *supra* note 11, at 25-26.

⁵⁰ Report, *supra* note 11, at 26.

⁵¹ Community Oriented Policing Services, *How Police Supervisory Styles Influence Patrol Officer Behavior* 6-9, U.S. DEPT. OF JUSTICE (June 2003), <https://www.ojp.gov/pdffiles1/nij/194078.pdf>.

V. CNA Should Encourage NCPD to Adopt Effective Remedies that Eliminate Racial Disparities and Create a More Democratic Public Safety System

Residents of North Charleston have been working for years to reform public safety practices and end discriminatory policing in North Charleston and the surrounding region. The lessons that residents have learned through these endeavors, and lessons learned by communities nationwide, must be incorporated into CNA's recommendations. For example, a civilian oversight agency previously existed in North Charleston but did not have sufficient power to pursue its mission, its members lacked independence, and it expired because City Council did not value it enough to sustain it. Communities nationwide are confronting the failures of officer training and considering the role that law enforcement officers play within broader public safety system. North Charleston should not repeat the mistakes of the past. We urge CNA to adopt the recommendations below, which incorporate lessons that North Charleston residents have learned from prior local reform efforts.

A. CNA should be responsive to the calls of North Charleston's residents for an effective community oversight mechanism and accountability system

1. Community oversight

CNA should urge City Council to pass an ordinance to establish a community oversight body over NCPD and to inform public safety practices in North Charleston. This process should include public input regarding the composition of the oversight body, its powers, and its jurisdiction. North Charleston would not be unique in this endeavor; Greenville, South Carolina recently established its own permanent community oversight body over the Greenville Police Department.⁵² Similar to Greenville's Public Safety Citizen Review Board, North Charleston's oversight body must have authority to review and influence NCPD general orders, policies, and practices.⁵³ It must also have subpoena power and authority to receive and investigate complaints, parallel to any internal NCPD process, made by members of the public or NCPD supervisors and complaints made against NCPD supervisors.⁵⁴ Moreover, based upon its investigation of complaints, the body must have authority to recommend consequences or discipline.

Moreover, the community oversight body must consist of members of the community selected by an independent and unbiased process.⁵⁵ Board members should be qualified and have a demonstrated interest in promoting equitable public safety practices.⁵⁶ Board members must receive compensation for their service on the body and the City should provide members with training through the National Association of Civilian Oversight of Law Enforcement on matters

⁵² See Public Safety Citizen Review Board, City of Greenville, South Carolina, <https://boards.greenvillesc.gov/board/1807>. Richland County also has a community oversight body over the Sheriff's Office. Citizen's Advisory Council, Richland County Sheriff's Department, <https://www.rcsd.net/our-programs/citizens-advisory-council/>.

⁵³ See Public Safety Citizen Review Board, City of Greenville, South Carolina, <https://boards.greenvillesc.gov/board/1807>.

⁵⁴ *Id.*

⁵⁵ *What should the qualifications and training be for oversight practitioners?*, National Association for Civilian Oversight of Law Enforcement, <https://www.nacole.org/qualifications>.

⁵⁶ *Id.*

related to public safety and civilian oversight.⁵⁷ Furthermore, to effectively perform its independent oversight function, the body must be supported by an attorney independent of the City and NCPD, researcher(s), investigator(s), and administrative staff.⁵⁸

2. CNA should make recommendations to ensure NCPD's complaint intake process is accessible, investigations are thorough, and discipline is appropriate for the offense

CNA should ensure that NCPD's complaint intake system is accessible so that people are informed about the process, can make complaints through multiple channels, and can view the status of their complaint as it is investigated. NCPD's online complaint form should be bifurcated from its compliments form. Multiple methods for filing a complaint must be established to ensure that all are able to file a complaint including a central hotline number, independent of NCPD, to call to file a complaint. Physical forms must also be made available in public places including libraries and community centers. Residents must be permitted to file a complaint anonymously and reference numbers must be made available to permit residents to track the status of the complaint. To prevent retaliation, if NCPD officers are notified about complaints made against them, they must not be permitted to access the complaint file and the identity of complainants, victims, and witnesses must be protected.

Likewise, CNA must review NCPD's internal investigations to ensure that they are fair, thorough, and independent. CNA must consider whether performance reviews accurately reflect consequences for misconduct and whether discipline imposed, if any, was appropriate and commensurate with the offense.

B. CNA's remedies should effectively reduce racial disparities in enforcement actions

To end NCPD's disparate stopping, citing, arresting, and using force against Black residents and reduce its reliance on policing, the City should redirect calls to alternative responders in certain cases and NCPD should limit officers' discretion where discretion is often abused in a racially disparate manner and incentivize officers to resolve disputes without resorting to arrests.

Too often, officers make stops, searches, and arrests for low-level offenses, disproportionately against people of color,⁵⁹ which could be resolved without the involvement of law enforcement officers.⁶⁰ For example, a study of traffic stop outcomes by the United States

⁵⁷ *Id.*

⁵⁸ Greenville's oversight body is supported by a secretary and staff. *See* By-Laws, Public Safety Citizen Review Board, City of Greenville, South Carolina, <https://www.greenvillesc.gov/DocumentCenter/View/5653/Bylaws-Public-Safety-Citizens-Review-Board?bidId=>; National Association for Civilian Oversight of Law Enforcement, *Civilian Oversight of Law Enforcement: Report on the State of the Field and Effective Oversight Practices* 68-69 (2021), <https://cops.usdoj.gov/RIC/Publications/cops-w0952-pub.pdf> (recommending oversight bodies be adequately supported by resources and qualified staff).

⁵⁹ *E.g.* Andrew Gelman, et al., *An Analysis of the New York City Police Department's "Stop-and-Frisk" Policy in the Context of Claims of Racial Bias*, JOURNAL OF THE AMERICAN STATISTICAL ASSOCIATION (2007), <http://www.stat.columbia.edu/~gelman/research/published/frisk9.pdf>;

⁶⁰ Rob Waters, *Enlisting Mental Health Workers, Not Cops, In Mobile Crisis Response*, HEALTH AFFAIRS (June 2021), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2021.00678>; Linda A. Teplin, *Keeping the Peace: Police*

Bureau of Justice Statistics revealed that “Black drivers (4.5%) were twice as likely as white drivers (2.1%) to be arrested . . . ,” while “whites (18.6%) were more likely than [B]lacks (13.7%) to be verbally warned by police.”⁶¹ A report from the Vera Institute provides that low-level offenses “drives the country’s high arrest rates” with disorderly conduct and drug abuse accounting for 80% of arrests, “while serious violent and property crime charges [] make up less than 5 percent.”⁶² And among arrests for low-level offenses, “Black people bear the brunt of this overenforcement: they are arrested at a rate 2.38 times that of white people.”⁶³ The report found that, in Philadelphia, the decriminalization of low-level offenses “coincided with reductions in overall arrest numbers” with a 46% drop in arrests from 2014 to 2018.⁶⁴

The criminalization that results from an arrest has deep and long-term consequences for both the person arrested and their community. To reduce such criminalization, the City of North Charleston should develop alternative responders or community-based programs for disputes that can be resolved through means such as mediation, or without the presence of armed officers.⁶⁵ A review of calls for service in numerous jurisdictions found that serious violent crimes make up around 1 percent of all calls for service and officers spend roughly 4 percent of their time on these serious violent crimes.⁶⁶ Meanwhile, 32-37 percent of officer time was spent responding to noncriminal calls.⁶⁷ Some jurisdictions have already begun using alternative responders for some calls for service. For example, in Eugene, Oregon, an alternative program has been running for thirty years and unarmed pairs of EMTs and crisis response workers answer calls for service involving people in crisis.⁶⁸ In 2019, these unarmed workers had some level of involvement in 20

Discretion and Mentally Ill Persons, NATIONAL JUSTICE INSTITUTE JOURNAL (July 2000), <https://www.ojp.gov/pdffiles1/jr000244c.pdf> (recommending “the need for significant increases in funding for mental health services in the community.”); Amanda Fialk, *Cops shouldn't be first at scene in mental health crises. NYC pilot program needed nationwide*, USA TODAY (Dec. 2, 2020), <https://www.usatoday.com/story/opinion/policing/2020/12/02/cops-shouldnt-first-mental-health-call-ny-program-needed-nationwide-column/6422931002/>.

⁶¹ Bureau of Justice Statistics, U.S. Department of Justice, *Contacts between Police and the Public*, 2005 (Apr. 2007), <https://bjs.ojp.gov/content/pub/pdf/cpp05.pdf>.

⁶² Mary Fleck & Aaron Stagoff-Belfort, *Reducing Policing’s Footprint? Racial Disparities and Arrest Trends After Misdemeanor Decriminalization and Legalization in Denver and Philadelphia*, VERA INSTITUTE 3 (May 2021), <https://www.vera.org/downloads/publications/reducing-policings-footprint.pdf> (citing the Uniform Crime Reporting Program’s 2013 Summary Reporting System User Manual).

⁶³ *Id.* at 3-4.

⁶⁴ *Id.* at 6. Vera also notes that “offenses that Philadelphia decriminalized represent 17 percent of the total decline in arrests since 2014” indicating that decriminalization by itself does not eliminate racial disparities in policing – officer discretion must also be limited. *Id.*

⁶⁵ See e.g. Leah Sakala, Samantha Harvell, Chelsea Thomson, *Public Investment in Community Driven Safety Initiatives*, URBAN INSTITUTE (Nov. 2018), https://www.urban.org/sites/default/files/publication/99262/public_investment_in_community-driven_safety_initiatives_1.pdf; Ed Chung, Betsy Pearl, *How To Reinvest in Communities When Reducing the Scope of Policing*, CENTER FOR AMERICAN PROGRESS (July 29, 2020), https://cdn.americanprogress.org/content/uploads/2020/07/28150215/Reducing-the-Scope-of-Policing.pdf?_ga=2.156036091.1568591555.1610383133-53089375.1605653369.

⁶⁶ Jeff Asher and Ben Horwitz, *How Do the Police Actually Spend Their Time?*, N.Y. TIMES (June 19, 2020), <https://www.nytimes.com/2020/06/19/upshot/unrest-police-time-violent-crime.html>.

⁶⁷ *Id.*

⁶⁸ See Statement of Ebony C. Morgan, Hearing on “Behavioral Health and Policing: Interactions and Solutions.” Subcommittee on Criminal Justice and Counterterrorism of the United States Senate Judiciary Committee 3-4, (Apr. 22, 2021),

percent of all calls for service in Eugene.⁶⁹

NCPD should also develop a policy that requires supervisory review and approval for enforcement of minor offenses, to ensure that enforcement actions are lawful and consistent with community priorities.⁷⁰ NCPD should also require officers to document whether a stop is based on specific information tying a particular individual to an actual crime, and further justify their stops by offering specific reasoning to their supervisor, a practice which can reduce needless stops.⁷¹

Recently, the Minneapolis Police Chief stated that officers would not conduct traffic stops for “expired tabs, an item dangling from a mirror, or not having a working license plate light.”⁷² A number of jurisdictions are contemplating removing law enforcement officers from traffic enforcement altogether, or limiting the traffic stops that officers conduct for offenses that are frequently used as a pretext and disproportionately on drivers of color.⁷³ North Charleston should seriously consider doing the same. Some North Charleston community members have shared their desire to have unarmed officers make traffic stops and unarmed civilians conduct field interviews.⁷⁴ Others have suggested funds be reallocated from NCPD to invest in infrastructure, mental health services, and social workers.⁷⁵ The City should invest in community-based safety programs, alternative responders to certain calls for service, and reduce officers’ discretion in low level offenses, such as traffic infractions, to reduce racial disparities in NCPD’s enforcement practices.

C. CNA should recommend that NCPD limit officers’ interaction with youth to prevent their involvement in the criminal legal system

National research shows that while there is no evidence that students of color misbehave

<https://www.judiciary.senate.gov/imo/media/doc/4.22.2021%20Ebony%20Morgan%20Subcommittee%20Hearing%20Testimony.pdf>.

⁶⁹ *Id.* at 4.

⁷⁰ North Charleston would join reforms implemented by the Baltimore Police Department and the Newark Police Department. *Lesser Offenses & Alternatives to Arrest, Policy 1018*, Baltimore Police Department (Nov. 18, 2020), <https://public.powerdms.com/BALTIMOREMD/documents/359897>; Rebecca Panico, *Newark cops will stop arresting people for minor bench warrants*, NJ (Apr. 24, 2021), <https://www.nj.com/essex/2021/04/newark-cops-will-stop-arresting-people-for-minor-bench-warrants.html>.

⁷¹ Stephanie Sierra, et al., *Black men are 8 times more likely to be stopped by Oakland police than White men, data shows*, ABC 7 NEWS (Sept. 8, 2020), <https://abc7news.com/oakland-police-opd-racial-profiling-traffic-stops/6414305/>; See Jonathan Mummolo, *Modern Police Tactics, Police-Citizen Interactions, and the Prospects for Reform*, J. POLITICS (Dec. 6, 2017), https://scholar.princeton.edu/sites/default/files/jmummolo/files/jop_sqf_w_appendix.pdf (finding that an NYPD policy that required officers to justify the specific reasons for stops to their supervisors reduced needless stops).

⁷² Brian Lambert, *Minneapolis police to no longer pull over motorists for minor traffic violations*, MINNPOST (Aug. 13, 2021), <https://www.minnpost.com/glean/2021/08/minneapolis-police-to-no-longer-pull-over-motorists-for-minor-traffic-violations/>.

⁷³ Cailin Crowe, *Cities consider taking police out of traffic stops*, SMART CITIES DIVE (June 3, 2021), <https://www.smartcitiesdive.com/news/cities-consider-taking-police-out-of-traffic-stops/600912/>.

⁷⁴ North Charleston Police Department Racial Bias Audit Community Townhall (June 12, 2021) (on file with LDF with copies provided to CNA).

⁷⁵ *Id.*

more than their white peers,⁷⁶ students of color are often disproportionately disciplined for minor, subjective offenses such as “disobedience and disruptive behavior,” where the decision to discipline is left to the discretion of school staff and officers who may be more likely to negatively interpret the behavior of certain racial and ethnic groups.⁷⁷ Additionally, overwhelming evidence from national and local studies has shown that law enforcement presence in schools does not make schools, nor students, safer⁷⁸ and, in fact, leads to the arrest and criminalization of Black children.⁷⁹

Research also demonstrates that at least 72% of students experience at least one major stressful event before they turn 18 and that suicide rates amongst 10-to-17-year old’s increased 70% between 2006 and 2016.⁸⁰ Research shows that schools without social services available to students on campus have lower graduation rates than those that provided services on campus.⁸¹ And conversely, “[s]chools that employ more school-based mental health providers see improved attendance rates, lower rates of suspension and other disciplinary incidents, expulsion, improved

⁷⁶ See U.S. DEP’T OF EDUC. OFFICE FOR CIVIL RIGHTS, DEAR COLLEAGUE LETTER ON THE NONDISCRIMINATORY ADMIN. OF SCH. DISCIPLINE (2014), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html> (citing multiple studies and articles supporting the conclusion that “substantial racial disparities . . . are not explained by more frequent or more serious misbehavior by students of color.”). Accord Russell J. Skiba, et al., *Are Black Kids Worse? Myths and Facts About Racial Differences In Behavior: A Summary of the Literature*, INDIANA U., March 2014, available at: http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/African-American-Differential-Behavior_031214.pdf.

⁷⁷ NAACP Legal Defense and Educational Fund, Inc., *Locked Out of the Classroom: How Implicit Bias Contributes to Disparities in School Discipline* (2017), available at http://www.naacpldf.org/files/about-us/Bias_Reportv2017_30_11_FINAL.pdf; KIRWIN INST., RACIAL DISPROPORTIONALITY IN SCHOOL DISCIPLINE (2014), available at <http://kirwaninstitute.osu.edu/wp-content/uploads/2014/02/racial-disproportionality-schools-02.pdf>; Janel A. George, *Stereotype and School Pushout: Race, Gender, and Discipline Disparities*, 68 ARK. L. REV. 101 (2016); David Simson, *Exclusion, Punishment, Racism and Our Schools: A Critical Race Theory Perspective on School Discipline*, 61 UCLA L. REV. 506 (2014).

⁷⁸ See *Police in Schools Are Not the Answer to School Shootings*, ADVANCEMENT PROJECT (2018), available at <https://www.naacpldf.org/wp-content/uploads/AP-NAACP-LDF-et-al-Police-In-Schools-2018-FINAL.pdf>.

⁷⁹ See, e.g., Tony Favro, *Discipline and civil rights in American state schools*, CITY MAYORS (Nov. 22, 2011), <http://www.citymayors.com/education/usa-school-discipline.html>; Wesley Wright, *Fear of black students, unfair treatment rampant in Denver schools, black educators say*, CHALKBEAT (Aug. 5, 2016), <https://www.chalkbeat.org/posts/co/2016/08/05/fear-of-black-students-unfair-treatment-rampant-in-denver-schools-black-educators-say/>; Jason Nance, *Students, Police, and the School-to-Prison Pipeline*, 93 WASHINGTON U. L. REV. 919 (2016), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2577333; Kerrin Wolf, *Booking Students: An Analysis of School Arrests and Court Outcomes*, 9 NORTHWESTERN J. OF LAW & SOCIAL POLICY 1 (Fall 2013), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1109&context=njls> (finding that over 90% of school-based arrests in Delaware during the 2010-2011 school year were for misdemeanors); Phillip Kassel, et al., *Let’s stop arresting kids for being kids*, BOSTON GLOBE (Feb. 10, 2014), <https://www.bostonglobe.com/opinion/2014/02/10/let-stop-arresting-kids-for-being-kids/pFuP3MwCROt2Tl4rjG7IK/story.html> (finding that in Boston, Worcester, and Springfield, Massachusetts, children are most often arrested for minor offenses, with more than half of misconduct arrests in Springfield being for “disrespect”); Deanna Pan and Paul Bowers, *Criminal offense or adolescent misbehavior? ‘Disturbing schools’ blurs the line*, POST AND COURIER (Aug. 5, 2016), https://www.postandcourier.com/archives/criminaloffense-or-adolescent-misbehavior-disturbing-schools-blurs-the-line/article_dc56c01c-efe1-5bbb-bb73-7d266cc72bc0.html (Since 2001, in South Carolina there have been more than 29,000 referrals to the juvenile justice system for “disturbing school”).

⁸⁰ See Amir Whitaker, et. al., *Cops and No Counselors How the Lack of School Mental Health Staff Is Harming Students*, ACLU 4 (2020), available at <https://www.aclu.org/report/cops-and-no-counselors>.

⁸¹ U.S. Department of Education, *Issue Brief: Social Services*, U.S. DEP’T OF ED. 8 (July 2017), available at <https://www2.ed.gov/rschstat/eva/high-school/social-services.pdf>.

academic achievement and career preparation, and improved graduation rate.”⁸² Moreover, school-based health services “not only improve the health outcomes for those students, but also improve school safety.”⁸³

The impact of SROs and law enforcement in North Charleston’s schools should be analyzed. This analysis would show that SROs are harming students and should be removed from schools. More resources should be invested in counseling and services that create safe school climates and support students’ success.⁸⁴ Some North Charleston community members have suggested that school resources be used for social workers and therapists for students as opposed to school police.⁸⁵ Programs such as Positive Behavior Interventions & Supports⁸⁶ and trauma-informed care⁸⁷ are evidence-based and promising means of creating and maintaining supportive school environments.⁸⁸ Moreover, should a call for service regarding a youth be initiated, every effort must be exhausted to divert the youth away from the justice system, including outreach to parent(s)/guardian(s), a school counselor, a health program, or other community-based services,

⁸² See Amir Whitaker, et. al., *Cops and No Counselors How the Lack of School Mental Health Staff Is Harming Students*, ACLU 4 (2020), available at <https://www.aclu.org/report/cops-and-no-counselors>.

⁸³ *Id.*

⁸⁴ See American Federation of Teachers, *AFT expands anti-racism efforts, calls for separating police and schools*, AMERICAN FEDERATION OF TEACHERS (June 18, 2020), <https://www.aft.org/news/aft-expands-anti-racism-efforts-calls-separating-police-and-schools>; See, e.g., U.S. Department of Education, *Guiding Principles: A Resource Guide for Improving School Climate and Discipline*, U.S. DEP’T. OF ED. (Jan. 2014), <https://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>; U.S. Department of Education, *Directory of Federal School Climate and Discipline Resources*, U.S. DEP’T. OF ED. (Jan. 2014), <https://www2.ed.gov/policy/gen/guid/school-discipline/appendix-1-directory.pdf>; *Threat Assessment in Schools: A Guide to Managing Threatening Situations and to Creating Safe School Climates*, U.S. SECRET SERVICE & U.S. DEP’T OF EDUC. (Jul. 2004), available at <https://www2.ed.gov/admins/lead/safety/threatassessmentguide.pdf>. See also U.S. DEP’T OF JUSTICE & U.S. DEP’T OF EDUCATION, DEAR COLLEAGUE LETTER ON THE NONDISCRIMINATORY ADMINISTRATION OF SCHOOL DISCIPLINE (Jan. 8, 2014), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html> (providing that “[s]chools are safer when all students feel comfortable and are engaged in the school community . . . Equipping school officials with an array of tools to support positive student behavior . . . will both promote safety and avoid the use of discipline policies that are discriminatory or inappropriate.”); Anya Ka menetz, *Here’s How to Prevent the Next School Shooting, Experts Say*, NPR (Mar. 7, 2018), <https://www.npr.org/sections/ed/2018/03/07/590877717/experts-say-here-s-how-to-prevent-the-next-school-shooting>; International Association of Chiefs of Police, *Reducing Crime by Investing in Youth Prevention and Intervention Programs* (Dec. 18, 2017), <https://www.theiacp.org/resources/resolution/reducing-crime-by-investing-in-youth-prevention-and-intervention-programs> (a 2017 resolution by the International Association of Chiefs of Police identified “increasing the access, affordability and quality of early education and care programs, out of school time programs... and community-based alternative programs” and encouraged public officials to invest in programs that “improve youth development and community outcomes overall.”).

⁸⁵ North Charleston Police Department Racial Bias Audit Community Townhall (June 12, 2021) (on file with LDF with copies provided to CNA).

⁸⁶ See Jenni Owen, et al., *Instead of Suspension: Alternative Strategies for Effective School Discipline*, DUKE CENTER FOR CHILD AND FAMILY AND POLICY, 2015, available at https://law.duke.edu/childedlaw/schooldiscipline/downloads/instead_of_suspension.pdf.

⁸⁷ See Katy O’Grady, *Transforming Schools with Trauma-Informed Care*, ASCA SCHOOL COUNSELOR (Jan. 2017), available at <https://www.schoolcounselor.org/asca/media/asca/ASCAU/Trauma-Crisis-Management-Specialist/TransformingSchools.pdf>.

⁸⁸ See generally Office of Juvenile Justice and Delinquency Prevention, *Positive Youth Development* (Aug. 2014), <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/positiveyouthdevelopment.pdf>.

before involvement of a law enforcement officer.⁸⁹

D. CNA should recommend that the City require NCPD to regularly publish data regarding its officers' activities, disclose the technologies it uses, and require public input before acquiring new technology

The City and NCPD must be transparent about NCPD's use of technology and make data regarding the enforcement activities of officers available publicly. To improve transparency, the community must first be aware of the various types of technology used by NCPD. The City should require NCPD to disclose all technology it has acquired and/or uses including that which is used to collect data and information, any predictive policing, or any other algorithmic tools, drones, license plate readers, aerial surveillance, surveillance cameras, shot spotters, stingrays, or facial recognition technology. NCPD should also be required to disclose any and all monitoring of social media. The City should also clarify the steps, if any, it has taken to ensure that this technology is not used in ways that exacerbate racial and other inequities.

In its Report, CNA recommends that NCPD collect "comprehensive information about all traffic stops,"⁹⁰ "expand their field interview data form to collect the reason the contact took place and the outcome of the contact, including whether a search was conducted,"⁹¹ and record "ethnicity and race information when collecting intelligence."⁹² In addition to these items, CNA should also recommend that NCPD collect and make the following data and information publicly available disaggregated by race, ethnicity, gender and age of the officer(s) and individual(s) involved⁹³ on a monthly basis in an accessible manner, such as on NCPD's or the City's website:

- All traffic stops including all data already collected by NCPD and recommended by CNA, the justification for the stop, whether the individual(s) was ordered by the officer to exit the vehicle and the reason for the command, and whether the officer approached the vehicle with their service weapon drawn;
- All field interviews and pedestrian stops including all data already collected by NCPD and recommended by CNA, the justification for the field interview or stop, the accurate location of the stop, the length of the stop, whether the individual(s) were searched, and if so, whether consent was obtained or other basis for the search, whether any contraband was found in cases of a search, and the code for which the citation was issued;
- All encounters ending in arrest, including all data already collected by NCPD and

⁸⁹ See Letter from ACLU of South Carolina, et al. to Kristin Graziano, Sheriff, Charleston County, https://www.aclusc.org/sites/default/files/field_documents/memo_-_building_a_safer_and_more_just_charleston_county_1.pdf.

⁹⁰ Report, *supra* note 11, at 42.

⁹¹ Report, *supra* note 11, at 43.

⁹² Report, *supra* note 11, at 68.

⁹³ We appreciate that NCPD currently publishes monthly use of force and complaint data and identifies the race of the subject of force, complainant, and officers involved. NCPD should continue to publish this information and the additional information identified. See Complaints and Use of Force Incidents Per Month, North Charleston Police Department, <https://arc.northcharleston.org/complaints/index.html>.

recommended by CNA, the accurate location where the arrest occurred, the reason an encounter began, probable cause for the arrest, whether and what kind, if any, force was used to effectuate the arrest, and the outcome of the arrest, including whether the individual(s) was released without charge, released based on identity issue, or declined to be charged.

- All force incidents, even if they do not result in injury, including all data already collected by NCPD and recommended by CNA, when officers brandish, draw, and point their firearm, when a firearm is discharged and does not result in injury, when force is used in non-arrest encounters, the time, date, and location where force was used, whether any injuries were sustained, the severity of injury, and whether any individual(s) required medical attention or were transported to a hospital;
- All calls for service, including data already collected by NCPD and recommended by CNA, when and where the call for service was made, when and where the officer(s) responded to the call for service, and the outcome of the call for service; and
- Once investigations into alleged officer misconduct are complete, all documents related to the investigation of an officer, including all data already collected by NCPD and recommended by CNA, and discipline imposed, if any. Documents may be redacted to protect reasonable privacy interests.

This data and information must be made publicly available for the community to engage in the audit process, provide a measure of oversight of NCPD, and “improve . . . transparency”⁹⁴ within NCPD.

Likewise, footage from police body worn cameras must be made publicly available and uniformly regulated. Following the murder of Walter Scott, South Carolina lawmakers passed legislation requiring all law enforcement officers to wear body worn cameras. However, by exempting body worn cameras from the state’s FOIA law, legislators turned a tool sold to the public as a way to strengthen law enforcement accountability into one that shields law enforcement from accountability. We urge a recommendation that North Charleston codify strong policies governing the use of body cameras by NCPD, including but not limited to the following mandates:

- Requirement that body worn cameras be turned on whenever a law enforcement officer is responding to a call for service or at the initiation of any other law enforcement or investigatory encounter between a law enforcement officer and a member of the public and not turned off until the conclusion of the interaction;
- Rebuttable evidentiary presumption in favor of civil plaintiffs or criminal defendants in cases where law enforcement should have recorded footage with a body worn camera but failed to;

⁹⁴ Scope of Work, *supra* note 8, at 2.

- That appropriate disciplinary action is taken against an officer who fails to follow recording and retention requirements;
- That no law enforcement officer may review or receive an accounting of any body camera footage until they have completed their initial reports, statements, or interviews;
- When requested by a person involved in a law enforcement encounter or their family member or representative, the footage shall be released within five days of a request; and
- Comprehensive, uniform retention requirements that clarifies what happens to the video footage from the body worn cameras, where it is stored, how long it is stored, and who has access to it.

E. Given the usage of white supremacist symbols by NCPD officers, NCPD must implement policies and practices to identify and terminate officers who cannot perform their work in an unbiased manner

There is a documented history of anti-Black racial bias by NCPD officers, such as through officers' use of tools⁹⁵ and images⁹⁶ with white supremacist symbols. In 2006, the FBI warned of the threat of “[w]hite supremacist presence among law enforcement personnel [] due to the access they may possess to restricted areas vulnerable to sabotage and to elected officials or protected persons, whom they could see as potential targets for violence.”⁹⁷ The history of white supremacist infiltration of law enforcement agencies nationwide is, likewise, well documented.⁹⁸ A recent Brennan Center report on white supremacy in law enforcement noted that “the FBI reported that white supremacists posed a ‘persistent threat of lethal violence’ that has produced more fatalities than any other category of domestic terrorists since 2000.”⁹⁹

NCPD must develop and implement policies to identify and terminate officers who cannot perform their work in an unbiased manner. NCPD must also “initiate mitigation plans designed to ensure public safety and uphold the integrity of the law [which] could include referrals to

⁹⁵ Andrew Knapp, *Racist Nazi symbol found on North Charleston police flashlight; origin a mystery*, POST AND COURIER (Oct. 3, 2018), https://www.postandcourier.com/news/racist-nazi-symbol-found-on-north-charleston-police-flashlight-origin-a-mystery/article_5ce00124-c683-11e8-aa8c-c7879c814cd8.html.

⁹⁶ Michael E. Miller, *North Charleston cop fired for posing in Confederate flag underwear on Facebook*, WASH. POST (June 26, 2015), <https://www.washingtonpost.com/news/morning-mix/wp/2015/06/26/north-charleston-cop-fired-for-posing-in-confederate-flag-underwear-on-facebook/>.

⁹⁷ FBI Counterterrorism Division, *(U) White Supremacist Infiltration of Law Enforcement 3* (Oct. 17, 2006), <http://s3.documentcloud.org/documents/402521/doc-26-white-supremacist-infiltration.pdf>.

⁹⁸ Kenya Brown, *FBI warned of white supremacists in law enforcement 10 years ago. Has anything changed?*, PBS NEWS HOUR (Oct. 21, 2016), <https://www.pbs.org/newshour/nation/fbi-white-supremacists-in-law-enforcement> (noting that ties between officers and entire law enforcement agencies with hate groups have been revealed in the Los Angeles County Sheriff's Department, Illinois, Ohio, and Texas).

⁹⁹ Michael German, *Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement*, BRENNAN CENTER (Aug. 27, 2020), https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law#footnote3_1rh6xrj.

prosecutors, dismissals, other disciplinary actions, limitations of assignments to reduce potentially problematic contact with the public, retraining, and intensified supervision and auditing.”¹⁰⁰

Recommendations related to hiring must include the implementation of in-depth background checks which should include a review of social media accounts, an in-depth psychological evaluation, and references to ensure officers do not have a history of racial bias.

VI. An Independent Body, Responsive to Public Input, Should be Formed to Oversee the Implementation of the Recommendations

To ensure that CNA’s recommendations result in the intended changes, a body independent of CNA must be responsible for evaluating their implementation. Until a community oversight body is developed, an independent body should be established to oversee the implementation of the remedies that result from the audit process. This body should (1) be independent of CNA; (2) include members of the public invested in equitable public safety practices; (3) and be transparent with, and responsive to the public. A public comment process should be initiated regarding this oversight body and the methods it will use to evaluate the implementation of recommendations that result from the audit process.

VII. Conclusion

Thank you for considering our comment on the Report. The City has a unique opportunity to address and remedy years of racially discriminatory policing. It should ensure that this opportunity and the funds expended on this racial bias audit result in lasting, meaningful change and more equitable delivery of public safety services in North Charleston. The audit must be thorough and meaningfully engage the community to identify the causes, and recommend solutions to remedy, NCPD’s disparate policing practices. We request a meeting to discuss the above recommendations with you in the coming weeks. If you have questions, please do not hesitate to contact us at pcheema@naacpldf.org.

Sincerely,

Puneet Cheema
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NAACP Legal Defense and Educational Fund, Inc.

Marcus McDonald
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¹⁰⁰ *Id.*